IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8627 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NOORJAHANBANU N SHAIKH

Versus

O RAVI

Appearance:

MR TS NANAVATI for Petitioners

Mr P K Shukla, AGP for Respondent No. 1, 3

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/06/2000

ORAL JUDGEMENT

This is a petition filed under Articles 14, 21 and 226 of the Constitution of India along with the provisions of Gujarat Panchayat Act, 1961 challenging the order passed by the learned Collector, Valsad on

6.10.1990 for the recovery of Rs.35000/- from the petitioners. The facts may be briefly stated as follows:

2. The Pardi Nagar Panchayat in Valsad District had sanctioned a contract for recovery of octroi dues to one Ahmed Sharif Umerbhai Maniar for a period of one year from 1.4.1986. The said Maniar had paid an amount of Rs.90,000/- to the Panchayat as deposit. However, the said Maniar felt that the work was not profitable. Therefore, he left the work in the middle of the year. However, Chairman of the Panchayat refunded the amount of Rs.70,000/- to the said Maniar without any Resolution of the said Panchayat. Therefore, a complaint was made by one Kirti Raj being Member of the said Panchayat on 6.10.1990 to the Collector at Valsad stating that the Chairman as well as Vice-Chairman both have conspired and illegally refunded the said amount of Rs.70,000/- to the said Maniar. That the said refund was against the contract and, therefore, the Chairman as well as Vice-Chairman have put the Panchayat to loss to the extent of Rs.70,000/- and, therefore, the said amount be recovered from those two persons.

3. Learned Collector undertook an enquiry and held that the Chairman as well as Vice-Chairman both were guilty in refunding the said amount to Mr Maniar and, therefore, they have caused damage to the Panchayat and they are liable to pay the said amount to the Panchayat. Therefore, the learned Collector passed an order on 6.10.1990 for the recovery of Rs.35,000/- from each of the two - Chairman and Vice-Chairman of the said Panchayat. Thereafter the recovery proceedings started and it was noticed that the Chairman had died. It was observed in the order of the learned Collector that since the Chairman had died, nothing can be done against him. However, an order was passed for recovery of the said amount equally from both the persons. The present petitioners are heirs and legal representatives of the deceased Chairman of the said Panchayat. They have preferred this petition stating that the aforesaid order was passed after the death of the deceased Chairman of the Panchayat and neither the deceased Chairman nor the present petitioners were given opportunity of being heard before passing the aforesaid order of recovery of Rs.35,000/-. The aforesaid order is, therefore, being challenged on the ground that no opportunity was afforded to the petitioners to meet with the case of the aforesaid applicant and in fact the deceased Chairman was not guilty of any wrong committed by him and no damage has been caused on account of any act or omission on the part of the deceased Chairman and, therefore, no amount be

recovered either from the deceased Chairman or from the present petitioners. Therefore, it is said that the said recovery is illegal and against principles of natural justice. The petitioners have therefore, prayed for appropriate writ, order or direction quashing and setting aside the aforesaid order passed by the first respondent dated 6.10.1990.

4. Notice was issued to the respondents and thereafter, the petition was admitted and interim relief was continued against the recovery. Learned AGP has appeared on behalf of the State. I have heard the learned counsel for the parties and have perused the papers.

5. It is apparently clear that the aforesaid contract was given for one year for the period beginning from 1.4.1996 and an amount of Rs.90,000/- was deposited by Mr Maniar with the Panchayat and the work was left on 15th of May, 1986. It is also not much in dispute that an amount of Rs. 70,000/- was refunded to Mr Maniar. It is also not in dispute that the learned Collector has passed order for recovery of the said amount holding that 50% of the amount should be recovered from the legal representatives of the deceased Chairman and 50% from the Vice Chairman.

6. The deceased Chairman has died on 10.7.1986. The complaint was made to the learned Collector after the death of the deceased Chairman. Therefore, admittedly, the deceased Chairman was not alive when the proceedings started. Admittedly, the petitioners were not served with notices for the aforesaid proceedings for the recovery of the said amount. It appears that notice was issued in the name of the deceased Chairman but son of the deceased Chairman has made a statement that the notice stood in the name of the deceased Chairman, and therefore, the postal authorities did not deliver it to him and he was not permitted to receive the same. It therefore, cannot be said that the present petitioners were served with notices and they refused. The notice was in the name of the dead person and therefore, it would not be a notice in the eye of law. That would make it clear that the proceedings have proceeded exparte against the petitioners without intimation or the notice given to them. It is a matter of recovery of Rs. 35,000/- and that too on account of the aforesaid fault said to have been committed by the deceased Chairman of the Panchayat. It is, therefore, clear that the aforesaid case has been proceeded and the proceedings have been conducted exparte without following the

principles of natural justice. Principles of natural justice require that at least a show cause notice should have been issued to the persons against whom some action is sought to be taken.

7. I have heard the learned AGP for the respondents. He is unable to state that the petitioners as legal representatives, were served with notice or that some other opportunity of any kind has been afforded to the petitioners for defending their case etc.

8. It is, therefore, apparently clear that the aforesaid proceedings went ahead and had actually been concluded against the interest of the petitioners without giving any opportunity of being heard to them. It is, therefore, clearly in breach of principles of natural justice. Therefore, the orders passed by the Collector for recovery of Rs.35,000/- against the present petitioners deserves to be set aside.

9. While passing the aforesaid orders, the Collector has discussed the matter at length and has given reasons for passing such orders. When de novo trial is required to be conducted against the petitioner, it would be necessary to observe that while holding de novo trial against the petitioners, the Collector will be free from the influence on order on the record. This would mean that there shall be fresh application of mind without considering the reasons and findings recorded in the earlier order by the learned Collector holding the petitioners responsible to repay a sum of Rs.35,000 Naturally, the earlier findings and reasons recorded by the Collector in the aforesaid order dated 6.10.1990 shall not be binding to the Collector while holding fresh enquiry and passing fresh order. The matter is being disposed of on the ground that principles of natural justice has not been observed by the learned Collector. Hence it is not necessary for this Court to go into the merits and demerits of the case and the Court has not considered the merits and demerits in the aforesaid background of the case.

10. In the aforesaid view of the matter, it is clear that the orders passed by the Collector dated 6.10.1990 are illegal so far as they relate to the petitioners and, therefore, the impugned order is required to be quashed and set aside. This petition is accordingly allowed. The order passed by the Collector dated 6.10.1990 and placed at Annexure 'A' so far as they relate to the petitioners i.e. fixing the responsibilities of the deceased chairman of the Pardi Nagar Panchayat, are

quashed and set aside. The learned Collector shall however be at liberty to hold fresh enquiry after issuing notice to the petitioners and after following due process of law in the light of the background of the observations made hereinabove. It will be open to the petitioners to raise relevant objections against holding the petitioners responsible for repayment of the said amount. In the aforesaid view of the matter, the order for recovery of Rs.35,000/- against the petitioners are also quashed and set aside. The respondents are prevented from recovering the said amount from the petitioners without holding fresh enquiry as aforesaid .

Rule is made absolute accordingly. No order as to costs.

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msp.